

1 STEPHEN THOMAS DAVENPORT, JR. #88208
 2 JEFFREY G. McCLURE #152974
 3 DAVENPORT GERSTNER & McCLURE
 4 2540 Camino Diablo, Suite 200
 Walnut Creek, California 94597
 Telephone: (925) 279-3430 Fax: (925) 932-1961

5 Attorneys for Defendants M&M Installation, Inc., Mark Simas, Ken Simas, Jack Simas, Dave
 6 Simas, Craig Simas and Michele Simas Carli and Defendant/Counter-Claimant Simas Floor
 Company, Inc.

7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10
 11 Resilient Floor Covering Pension Fund, et.
 12 al.,

13 Plaintiffs,

14 vs.

15 M&M Installation, Inc., et. al.,

16 Defendants.

17
 18 and related Counter-Claim

5561
 No. C08-0556-BZ

**STIPULATED REQUEST FOR
 MODIFIED BRIEFING SCHEDULE
 AND INCREASED PAGE LIMITS
 FOR CROSS-MOTIONS FOR
 SUMMARY JUDGMENT;
 ORDER THEREON (proposed)**

19
 20 Plaintiffs Resilient Floor Covering Pension Fund and Board of Trustees of the Resilient
 21 Floor Covering Pension Fund ("Plaintiffs") and Defendants M&M Installation, Inc., Mark Simas,
 22 Ken Simas, Jack Simas, Dave Simas, Craig Simas and Michele Simas Carli and
 23 Defendant/Counter-Claimant Simas Floor Company, Inc. (collectively, "Defendants"), by and
 24 through their respective attorneys of record, jointly request that the Court approve the following
 25 modified briefing schedule and increased page limits for their cross-motions for summary
 26 judgment. This matter is before the Court after remand from the 9th Circuit Court of Appeals
 27 reversing the Court's earlier Order granting Plaintiff's Cross-Motion for Summary Judgment. A
 28 new trial date has not yet been set. When the Court heard the parties' initial Cross-Motions for

Summary Judgment, the Court approved a modified briefing schedule which allowed both parties additional time to reply to the other party's briefs due to the complexity of the issues to be addressed. See, Order Modifying Pretrial Scheduling Order, filed June 29, 2009 (Docket 27).


The 9th Circuit's decision requested that the Court address additional and complex issues which had not been addressed by the parties in their initial cross-motions for summary judgment. Further, following remand, Plaintiffs' filed a 2nd Amended Complaint which added six new, individual defendants as well as new theories of relief against those six new defendants. Accordingly, the issues to be briefed in the upcoming cross-motions for summary judgment are much more complex than those addressed in the earlier cross-motions. Therefore, the parties now request that the Court approve a modified briefing schedule, as follows:

1. Plaintiffs' motion to be filed by November 17, 2011;
2. Defendants' opposition and cross-motion to be filed by December 15, 2011;
3. Plaintiffs' reply and opposition to be filed by January 6, 2012;
4. Defendants' reply to be filed by January 27, 2012; and
5. The hearing on the cross-motions to held on February 15, 2012 at 10:00 a.m.

Due to the complexity of the issues to be briefed, the parties also request that the page limit for their opening briefs be increased to 35 pages.

Dated: October 12, 2011.

DAVENPORT GERSTNER & McCLURE


STEPHEN THOMAS DAVENPORT, JR.

Attorneys for Defendants M&M Installation, Inc., Mark Simas, Ken Simas, Jack Simas, Dave Simas, Craig Simas and Michele Simas Carli, and and Defendant/Counter-Claimant Simas Floor Company, Inc.

Dated: October 11, 2011.

KRAW & KRAW


KATHERINE McDONOUGH

Attorneys for Plaintiffs Resilient Floor Covering Pension Fund and Board of Trustees of the Resilient Floor Covering Pension Fund

1 **ORDER THEREON**

2 Good cause appearing, the parties' Stipulation requesting a modified briefing schedule for
3 the parties' cross-motions for summary judgment and requesting increased page limits on their
4 opening briefs is granted, as follows:

- 5 1. Plaintiffs' motion for summary judgment shall be filed by November 17, 2011;
- 6 2. Defendants' oppositions and any cross-motions for summary judgment shall be
7 filed by December 15, 2011;
- 8 3. Plaintiffs' reply to Defendants' opposition and opposition to Defendants' cross-
9 motion shall be filed by January 6, 2012;
- 10 4. Defendants' reply shall be filed by January 27, 2012;
- 11 5. The hearing on the motions is set for February 15, 2012 at 10:00 a.m.; and
- 12 6. The page limits for Plaintiffs' opening brief on their motion for summary judgment
13 and for Defendants' opening briefs in opposition to Plaintiffs' motion for summary
14 judgment and in support of their cross-motion for summary judgment shall be
15 increased to 35 pages.

16
17 IT IS SO ORDERED.

18
19 Dated: 18 Oct, 2011.


UNITED STATES MAGISTRATE JUDGE